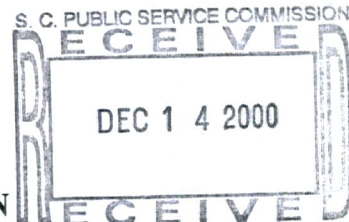


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2 12/14/00
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BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION
Docket No. 2000-516-C



4
5 Petition of)
6)

7 **ADELPHIA BUSINESS SOLUTIONS**)
8 **OF SOUTH CAROLINA, INC.**)

9)
10 For Arbitration with BellSouth)
11 Telecommunications, Inc. Pursuant to)
12 Section 252(b) of the Communications)
13 Act of 1934, as amended by the)
14 Telecommunications Act of 1996)

**PREFILED REBUTTAL
TESTIMONY OF
ADELPHIA BUSINESS
SOLUTIONS OF SOUTH
CAROLINA, INC.**

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17 **PREFILED REBUTTAL**
18 **TESTIMONY OF TIMOTHY J. GATES**
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Dated: December 14, 2000

RETURN DATE:

SERVICE: ok

BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION
Docket No. 2000-516-C

Petition of)	
)	
ADELPHIA BUSINESS SOLUTIONS)	
OF SOUTH CAROLINA, INC.)	PREFILED REBUTTAL
)	TESTIMONY OF
For Arbitration with BellSouth)	ADELPHIA BUSINESS
Telecommunications, Inc. Pursuant to)	SOLUTIONS OF SOUTH
Section 252(b) of the Communications)	CAROLINA, INC.
Act of 1934, as amended by the)	
Telecommunications Act of 1996)	

REBUTTAL TESTIMONY OF TIMOTHY J. GATES

- 1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RE-
- 2 CORD.
- 3 A. My name is Timothy J Gates. My business address is as follows: 15712 W. 72nd
- 4 Circle, Arvada, Colorado 80007.
- 5 Q. ARE YOU THE SAME TIMOTHY J GATES WHO FILED DIRECT TESTIMONY
- 6 IN THIS PROCEEDING?
- 7 A. Yes, I am.
- 8 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?
- 9 A. The purpose of my testimony is to rebut certain statements made by BellSouth
- 10 witness John A. Ruscilli in his direct testimony filed in this Docket on December
- 11 7, 2000, with regard to Issues 2, 3, 4, 5, and 6.

ISSUE 2 – (A) SHOULD BELL SOUTH BE PERMITTED TO DEFINE ITS OBLIGATION TO PAY RECIPROCAL COMPENSATION TO ADELPHIA BASED SOLELY UPON THE PHYSICAL LOCATION OF ADELPHIA’S CUSTOMERS? (B) SHOULD BELL SOUTH BE ABLE TO CHARGE ORIGINATING ACCESS TO ADELPHIA ON ALL CALLS GOING TO A PARTICULAR NXX CODE BASED UPON THE LOCATION OF ANY ONE CUSTOMER?

Q. HAVE YOU REVIEWED THE TESTIMONY OF BELL SOUTH WITNESS, MR. JOHN A. RUSCILLI AS IT RELATES TO THIS ISSUE?

A. Yes I have.

Q. MR. RUSCILLI DESCRIBES THE DISPUTE ON THIS ISSUE AS WHETHER RECIPROCAL COMPENSATION SHOULD APPLY TO LONG-DISTANCE CALLS. IS THIS AN ACCURATE STATEMENT?

A. No. BellSouth and Adelphia disagree on the definition of a local call. Adelphia and BellSouth agree that reciprocal compensation should not be paid on long-distance calls. IntraNXX calls, however, have always been treated as local calls. The suggestion that an intraNXX call in a virtual NXX situation is a toll call is a mischaracterization. One need only look at the way BellSouth treats its FX service to see that Mr. Ruscilli is asking this Commission to treat new entrants differently than BellSouth treats itself.

Q. PLEASE EXPLAIN.

A. In discovery in other proceedings, BellSouth has admitted that calls terminating to an FX customer would be rated as local and that reciprocal compensation would be paid on such calls. Given that fact, it is improper for BellSouth to suggest that calls to virtual NXX numbers are anything but local. It is also ironic that Mr. Ruscilli would say “Traffic jurisdiction based on rate center assignment may

1 be used for retail end user billing, but not for inter-carrier compensation pur-
2 poses.” (Ruscilli Direct at 13) At the risk of stating the obvious, there is no ra-
3 tionale for using different rating mechanisms based on whether a call is retail or
4 wholesale.

5 **Q. HAS THIS COMMISSION OR THE FCC EVER RULED THAT IT IS INAPPRO-**
6 **PRIATE TO ASSIGN NXX CODES AS PROPOSED BY ADELPHIA?**

7 A. No. Adelphia is not violating any rules or orders by assigning NXX codes to
8 customers outside a local calling area. BellSouth has historically, and continues
9 to, assign NXX codes to FX customers located outside the local calling area tra-
10 ditionally associated with the NXX code. Further, BellSouth has said repeatedly,
11 that it does not oppose Adelphia’s assignment of such codes. (See, Direct Tes-
12 timony of Mr. Ruscilli at 11)

13 **Q. AT PAGE 13 OF HIS TESTIMONY MR. RUSCILLI STATES THAT “THE FCC**
14 **HAS MADE IT CLEAR THAT TRAFFIC JURISDICTION IS DETERMINED**
15 **BASED UPON THE ORIGINATING AND TERMINATING END POINTS OF A**
16 **CALL, NOT THE NPA/NXXs OF THE CALLING OR CALLED NUMBER.”**
17 **PLEASE COMMENT.**

18 A. Mr. Ruscilli is correct that the FCC has at times applied the end-to-end analysis
19 to determine jurisdiction (but not to determine rates). That approach, however,
20 has been questioned by the courts. The D.C. Circuit held that the FCC applied

1 the wrong analysis in the *ISP Order*.¹ In determining that ISP-bound traffic was
 2 not subject to reciprocal compensation under Section 251(b)(5), the FCC en-
 3 gaged in the end-to-end analysis that it has traditionally used to determine the ju-
 4 risdictional nature of traffic. The court rejected this approach, saying that
 5 “[h]owever sound the end-to-end analysis may be for jurisdictional purposes, the
 6 Commission has not explained why viewing [ISP-bound calls] as continuous
 7 works for purposes of reciprocal compensation.”² In other words, the fact that a
 8 call may be interexchange or even jurisdictionally interstate under an “end-to-
 9 end” analysis does mean that reciprocal compensation is not paid on the call.

10 As such, Mr. Ruscilli’s testimony suggesting that calls to different calling
 11 areas are not local and therefore not subject to reciprocal compensation is clearly
 12 wrong. Simply because a call terminates in a different local calling area does not
 13 mean that the call to the customer is not eligible for reciprocal compensation.

14 **Q. ARE YOU SUGGESTING THAT THE COURT’S RULING ON THIS ISSUE IS**
 15 **FINAL AND THAT THE FCC’S END-TO-END APPROACH IS NO LONGER**
 16 **VALID?**

17 **A.** No. But the Court did vacate the FCC Order and remand it to the FCC. Specifi-
 18 cally, the Court stated, “Because the Commission has not provided a satisfactory
 19 explanation why LECs that terminate calls to ISPs are not properly seen as “ter-
 20 minat [ing] ... local telecommunications traffic,” and why such traffic is “exchange

¹ Before the FCC; *Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemak-
 ing in CC Docket No. 99-68*; Released February 26, 1999; hereinafter referred to as the “*ISP Order*”.

² *Bell Atlantic v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

1 access" rather than "telephone exchange service," we vacate the ruling and re-
2 mand the case to the Commission.

3 **Q. MR. RUSCILLI DISCUSSES AN ORDER OF THE MAINE COMMISSION RE-**
4 **GARDING THE ASSIGNMENT OF NPA-NXX CODES. CAN YOU COMMENT**
5 **ON THE ORDER TO WHICH HE REFERS?**

6 A. Yes. Obviously, different state Commissions are free to establish different
7 standards relating to interconnection agreements. It is my opinion that the Maine
8 Commission took an extremely pro-monopoly stance on this issue, a stance that I
9 feel will have negative competitive consequences in the state of Maine. I would
10 caution this Commission against taking a similar position. Instead, I recom-
11 mend that the Commission decide this issue based on the evidence presented in
12 this case, including the evidence I presented in my direct testimony. However, if
13 the Commission is inclined to review the decisions of other Commissions on this
14 issue, then the Commission should contrast the Maine decision with the recent
15 conclusions of the Michigan Commission, which, when considering the same is-
16 sue, reviewed the Maine Commission's findings and declined to follow the harsh
17 results reached in Maine.³

18 **Q. HOW DOES ADELPHIA'S POSITION COMPARE TO THE MICHIGAN OR-**
19 **DER?**

20 A. Adelphia's position is completely consistent with the Michigan Commission's Order,
21 which I have attached to my testimony as Rebuttal Exhibit R-A. The Michigan

³ Michigan Public Service Commission, Case No. U-12382, August 17, 2000.

Commission rejects the very same arguments made by BellSouth in this case with respect to the classification of intra NXX calls as anything other than local, finding that "...intra NXX calls are to be considered local for rating purposes, despite their actual routing[.]"⁴ Additionally, and as I discussed in detail in my direct testimony, the Michigan Commission found that the use of a virtual NXX does not impact the ILECs financial and/or operational responsibilities, finding that under the virtual NXX framework, the costs to the ILEC do not differ, but are "the same as when the call is undisputedly local[.]"⁵

Q. MR. RUSCILLI AT PAGE 10 OF HIS TESTIMONY RECOMMENDS THAT ADELPHIA SEPARATELY IDENTIFY ANY NUMBER ASSIGNED TO A CUSTOMER THAT IS OUTSIDE THE LOCAL CALLING AREA ASSOCIATED WITH THAT END USER. PLEASE COMMENT.

A. As noted in my Direct, this proposal places a huge burden on CLECs. This would require CLECs to set up systems to identify and track numbers and to then report such numbers to BellSouth. Not only is such a system fraught with difficulties, but it provides BellSouth with a list of Adelphia's customers. New entrants should never be required to provide such information to the incumbent provider. BellSouth's proposal should be rejected. It is neither necessary nor prudent given BellSouth's failure to show that such calls are treated or handled any differently than other local calls.

⁴ *Id.* Page 9.

⁵ *Id.* Page 9.

1 Q. AT PAGE 15 OF MR. RUSCILLI'S TESTIMONY HE STATES THAT ADELPHIA
2 IS OFFERING FREE INTEREXCHANGE CALLING TO CUSTOMERS OF
3 OTHER LECS. DO YOU AGREE?

4 A. No. But even if his assertion were true, it is no concern of BellSouth's. The point
5 is that the use of virtual NXX codes does not change the manner in which Bell-
6 South handles local calls and does not impact BellSouth's costs.

7 Q. MR. RUSCILLI SUGGESTS AT PAGES 14 AND 15 OF HIS TESTIMONY THAT
8 ADELPHIA COULD PROVIDE THIS SERVICE THROUGHOUT THE STATE
9 OR EVEN THROUGHOUT THE NATION. PLEASE COMMENT.

10 A. This suggestion is ridiculous. I'm not aware of any competitive providers who are
11 using this service on an interstate basis. The service is used within a LATA pri-
12 marily to provide local Internet access for BellSouth customers.
13 ISPs need a local presence so that consumers do not need to make a toll call to
14 access the Internet. This service also allows ISPs to have a local presence with-
15 out having to build or lease facilities in every local calling area. The ISP industry
16 is very young and over time the ISP companies, and companies like Adelphia,
17 will extend their facilities as business and sound engineering principles dictate.
18 Until that time, however, this virtual NXX service is critical to the development of
19 e-commerce and the general use of the Internet. Indeed, many states have
20 statutory mandates for local dial-up access to the Internet in recognition of the
21 benefits such access brings to consumers and the economy in general.

1 **Q. SUPPOSE ADELPHIA OR OTHER NEW ENTRANTS DID USE THIS SERVICE**
2 **FOR INTERSTATE CALLING, HOW WOULD BELL SOUTH BE HARMED?**

3 A. First of all, as I noted above, I'm not aware of any new entrants using this type of
4 service for interstate or even interLATA or interNPA calls. But if they did, Bell-
5 South's obligations would not change. BellSouth is obligated to deliver traffic
6 originated by its customers to the interconnection point or IP. BellSouth is not
7 transporting the calls to other LATAs or other states as Mr. Ruscilli seems to
8 suggest. Adelphia is responsible for terminating that traffic whether it is in the
9 same exchange or in another state. Regardless of where the call terminates,
10 BellSouth's responsibilities and costs do not change.

11 **Q. DO YOU AGREE THAT THIS ISSUE DOES NOT IMPACT THE DEGREE OF**
12 **LOCAL COMPETITION IN SOUTH CAROLINA?**

13 A. No. BellSouth's proposal would eliminate reciprocal compensation for an entire
14 group of local calls. In fact, the proposal is egregious in two regards – not only
15 does it eliminate compensation for Adelphia for terminating traffic originated by
16 BellSouth's customers, but it also imposes access charges on the traffic. If Bell-
17 South's position is adopted, the cost of providing a local presence for ISPs and
18 other customers would skyrocket. The ultimate result would be an increase to
19 consumers for Internet access.

1 **Q. WOULD YOU ADDRESS MR. RUSCILLI'S COMMENT ON PAGES 17-18 OF**
2 **HIS TESTIMONY REGARDING YOUR DIRECT TESTIMONY ABOUT THE**
3 **COSTS INCURRED BY BELL SOUTH BASED ON THE LOCATION OF ADEL-**
4 **PHIA'S CUSTOMERS?**

5 **A.** Yes. First, BellSouth has admitted that its costs do not vary based on the
6 location of Adelphia's customer. Second, Mr. Ruscilli's testimony is inconsistent
7 with BellSouth's own treatment of FX service as discussed above. .

8 Third, I don't agree with Mr. Ruscilli that the examination of costs "misses the
9 point." I think that is exactly the point with which the Commission should be con-
10 cerned BellSouth has failed to show that the physical location of the called party
11 has any impact on its costs. BellSouth is trying to change the traditional manner
12 in which calls are determined as local because new entrants have developed this
13 new and innovative manner in which to provide service to customers. It is clear
14 that consumers and ISPs benefit from the service and that BellSouth is not
15 harmed in any way. If the Commission accepts BellSouth's position, consumers,
16 ISPs, CLECs and the economy in general will be harmed. As such, the Commis-
17 sion should ignore BellSouth's protestations and allow the new entrants to be in-
18 novative in bringing affordable Internet access to consumers.

19 **Q. DO YOU AGREE WITH MR. RUSCILLI THAT AN FX CALL IS A TOLL CALL**
20 **AND IT IS NOT SUBJECT TO RECIPROCAL COMPENSATION?**

21 **A.** No. Through discovery in other proceedings BellSouth has admitted that it pays
22 reciprocal compensation to CLECs who deliver traffic to FX numbers. Only now

that there is some competition for such services does BellSouth argue that FX service is a toll service.

In hearings in other states, BellSouth has indicated that it is trying to change the manner in which compensation is paid for FX traffic. In other words, BellSouth is changing its position on the jurisdiction of FX traffic now that competitors are providing similar services in new and innovative ways.

Q. AT PAGES 20 THROUGH 22 MR. RUSCILLI CITES THE TSR ORDER AND THE CFR FOR THE PROPOSITION THAT BELL SOUTH DOES NOT HAVE TO DELIVER TRAFFIC TO A SINGLE POINT OF INTERCONNECTION. PLEASE COMMENT.

A. If one were to accept the BellSouth position, it would make the single interconnection point requirement moot.

Q. HAS THE FCC SPECIFICALLY STATED THAT ONLY ONE INTERCONNECTION POINT IS REQUIRED PER LATA?

A. Yes. If any further clarification is needed, one can look to the FCC order approving Southwestern Bell's entry into the Texas long distance market. In that order, the FCC stated, "Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. *This means that a competitive LEC has the option to interconnect at only one*

1 *technically feasible point in each LATA.*⁶ It is quite clear that the FCC does not
2 require any more than one interconnection point per LATA.

3 **Q. WHAT WOULD BE THE IMPACT ON CLECs IF BELL SOUTH'S PROPOSAL**
4 **TO FORCE CLECs TO COLLECT TRAFFIC FROM EACH LOCAL CALLING**
5 **AREA WAS ACCEPTED?**

6 A. CLECs would be forced to duplicate BellSouth's network. Such a result has
7 always been deemed uneconomic by regulators. The FCC recognized this re-
8 cently when it found,

9 Nothing in the 1996 Act or binding FCC regulations requires a new
10 entrant to interconnect at multiple locations within a single LATA.
11 Indeed, such a requirement could be so costly to new entrants that
12 it would thwart the Act's fundamental goal of opening local markets
13 to competition.⁷ (emphasis added)

14 It seems clear that CLECs are not required to go to each and every local calling
15 area to collect traffic. Instead, and as required by the Act and FCC orders, Bell-
16 South is required to bring the traffic to the single interconnection point identified
17 by Adelphia.

⁶ *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, at para. 78 (rel. June 30, 2000) ("Texas 271 Order") (emphasis added).

⁷ MEMORANDUM OF THE FEDERAL COMMUNICATIONS COMMISSION AS *AMICUS CURIAE*, U.S. West Commun. Inc. v. AT&T; No. CV 97-1575 JE (U.S.D.C. Or.); dated September 14, 1998, at 20.

1 Q. DOES THIS MEAN THAT ADELPHIA WILL ALWAYS HAVE ONLY ONE IN-
2 TERCONNECTION POINT PER LATA?

3 A. No. Adelphia will work with BellSouth as necessary to establish additional inter-
4 connection points over time as traffic and sound engineering principles dictate.

5 **ISSUE 3 – SHOULD INTERNET PROTOCOL TELEPHONY BE EXCLUDED FROM**
6 **LOCAL TRAFFIC SUBJECT TO RECIPROCAL COMPENSATION?**

7 Q. IN YOUR DIRECT TESTIMONY YOU EXTENSIVELY QUOTED FROM RE-
8 CENT REMARKS OF CHAIRMAN KENNARD ADVOCATING THE CONTIN-
9 UED “UN-REGULATION” OF INTERNET TELEPHONY PRODUCTS AND
10 SERVICES. IN DISMISSING THE SIGNIFICANCE OF THE CHAIRMAN’S RE-
11 MARKS, MR. RUSCILLI DISTINGUISHES BETWEEN IP TELEPHONY OVER
12 THE PUBLIC INTERNET AND IP TELEPHONY OVER PRIVATE IP NET-
13 WORKS. DO YOU THINK CHAIRMAN KENNARD’S COMMENTS WERE IN-
14 TENDED TO ADDRESS ONLY IP TELEPHONY OVER THE PUBLIC
15 INTERNET?

16 A. It does not look that way to me. I addressed this so-called distinction in my direct
17 testimony. Although BellSouth seems to disagree, the clear context of Chairman
18 Kennard’s remarks indicate that, if anything, by referring to “the IP networks of
19 today,” Chairman Kennard was concerned with all forms traffic utilizing Internet
20 Protocol. For the Chairman, the relevant distinction quite obviously was not
21 Internet versus non-Internet, a distinction the Chairman, who is known to speak
22 with precision, never drew, but instead between legacy switched networks con-
23 trolled by incumbents, such as BellSouth, and the deployment of new technolo-

gies by new entrants, such as Adelphia. Thus, despite BellSouth's continued attempts to characterize these remarks as irrelevant to this proceeding, Chairman Kennard's comments are extremely relevant to what BellSouth is asking of the Commission in this arbitration – the Commission should carefully consider his advice.

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO THIS ISSUE?

A. The Commission should preserve the status quo and refrain from imposing any restrictions on this area of the marketplace. Mr. Kennard has cautioned other countries, France in particular, about allowing incumbents to prevent competition. Specifically, in his speech entitled "Internet: The American Experience", Mr. Kennard stated:

I do not want to mislead you into believing that we at the FCC have never made any mistakes. To the contrary, we have made many mistakes. If I had to sum it up, I would say that the vast majority of the mistakes occurred because we allowed incumbents to convince us to not open markets, or to slow down the introduction of competition from new entrants.

* * * *

Whenever we sided with the incumbent, we were on the wrong side of history. In those situations, consumers were the losers, and our economy suffered because it was unable to expand as rapidly as would have otherwise been the case. We did not make a mistake, however, with the Internet. As a result, we now have robust competition for the provision of the Internet, and that service is thriving in the United States.⁸

⁸ "Internet: The American Experience", An address by William E. Kennard, Chairman of the FCC to the Conference on "Internet & Telecommunications: The Stakes"; Paris, France, January 28, 2000.

Consistent with his advice, this Commission should not be swayed by BellSouth's arguments, the ultimate result of which would be to reduce or eliminate competition and increase the cost of Internet access for consumers in South Carolina. Further, to eliminate a particular type of local call – with no technical or policy rationale to support the segregation – from reciprocal compensation will have the effect of increasing the costs of new entrants while increasing the profitability of the incumbent.

ISSUE – 4 SHOULD THE PARTIES BE REQUIRED TO PAY RECIPROCAL COMPENSATION ON TRAFFIC ORIGINATING FROM OR TERMINATING TO AN ENHANCED SERVICE PROVIDER, INCLUDING AN INTERNET SERVICE PROVIDER (“ISP”)?

Q. WHAT IS BELL SOUTH’S POSITION ON THIS ISSUE?

A. BellSouth argues that because ISP-bound traffic is not local traffic but rather interstate access traffic, and not subject to the reciprocal compensation obligations of Section 251 of the Communications Act. It further asserts that payment of reciprocal compensation for such traffic is inconsistent with the law. See BellSouth Telecommunications, Inc.’s Response to Petition of Adelphia Business Solutions of South Carolina, Inc. For Arbitration and New Issue, at ¶ 33. BellSouth hinges its argument on the FCC’s ISP Declaratory Ruling. See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, Declaratory Ruling and Notice of Proposed Rulemaking, 14 FCC Rcd 3689 (1999) (*ISP Order*) and other FCC rulings relying on the same reasoning as the *ISP Order*.

1 **Q. ARE BELLSOUTH'S ARGUMENTS SOUND?**

2 A. No, there is an obvious flaw in these arguments – they rely on FCC pronounce-
3 ments in the *ISP Order* that have been vacated and remanded by the United
4 States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”). *Bell*
5 *Atlantic v. FCC*, 206 F.3d 1 (D.C. Cir. 2000). I discussed certain aspects of this
6 order earlier in this testimony.

7 The D.C. Circuit vacated and remanded the FCC’s decision for lack of
8 “reasoned decision-making.” In deciding whether ISP-bound traffic is “local,” the
9 FCC looked at whether such traffic is jurisdictionally interstate or intrastate. The
10 FCC applied the so-called “end-to-end” analysis – which Mr. Ruscilli refers to --
11 and found that most ISP-bound traffic is jurisdictionally interstate because the
12 termination points of Internet traffic are usually located in a different state or
13 country from the end-user subscriber. The D.C. Circuit held that this analysis
14 has no relevance to the question of whether ISP-bound traffic is “local” for recip-
15 rocal compensation purposes. Put another way, even if ISP-bound traffic is con-
16 sidered to be jurisdictionally interstate, the call from the end-user subscriber to
17 the ISP still could be “local” traffic and thereby qualify for reciprocal compensa-
18 tion under Section 251(b)(5) of the Communications Act. Accordingly, the Com-
19 mission should decline BellSouth’s invitation to rely on the FCC’s *ISP Order* for
20 the proposition that ISP calls are non-compensable, non-local traffic.

1 Ruscilli Direct Testimony at 40:19-20). This is not quite accurate. The primary
2 concern expressed by the D.C. Circuit was that the FCC failed to explain why the
3 jurisdictional end-to-end analysis should apply in the context of determining re-
4 ciprocal compensation. The issues addressed in the *Order on Remand*, to which
5 the D.C. Circuit made a passing reference, simply constituted "an independent
6 ground requiring remand." 206 F.3d at 8. Furthermore the Court held that the
7 FCC did not "even consider how regarding noncarriers as purchasers of 'ex-
8 change access' fits with the statutory definition of that term." See 206 F.3d at 8.

9 **Q. IF THE ISP ORDER WERE TO BE UPHOLD AFTER THE COURT'S REMAND**
10 **IS COMPLETED, WOULD YOU THEN AGREE WITH BELL SOUTH'S POSI-**
11 **TION?**

12 **A.** No. Even if the FCC's *ISP Order* remained good law, BellSouth's protestation
13 that, under that decision, ISP-bound traffic cannot be subject to reciprocal com-
14 pensation is not sustainable. As I quoted at page 50 of my direct testimony, the
15 *ISP Order* itself, even if one ignores the fact that it has been vacated, supports a
16 finding "that compensation is due for that traffic" (*ISP Order* at ¶ 25).

17 **Q. ARE THERE OTHER REASONS FOR THE COMMISSION TO REVISIT ITS**
18 **POLICY TOWARDS ISP TRAFFIC NOW?**

19 **A.** Yes. In my direct testimony, I testified at length regarding the severe public
20 policy implications of a finding that ISP traffic is not eligible for reciprocal com-
21 pensation. Significantly, BellSouth has neither challenged nor rebutted even one
22 of these concerns.

ISSUE 5 – IS BELL SOUTH REQUIRED TO PAY TANDEM CHARGES WHEN ADELPHIA TERMINATES BELL SOUTH LOCAL TRAFFIC USING A SWITCH SERVING AN AREA COMPARABLE TO A BELL SOUTH TANDEM?

Q. BELL SOUTH CLAIMS THAT, IN ORDER TO BE COMPENSATED AT THE TANDEM SWITCHING RATE, ADELPHIA MUST MEET BOTH A GEOGRAPHIC AND A FUNCTIONAL EQUIVALENCY TEST. DO YOU AGREE?

A. No. My direct testimony discusses the explicit single requirement for tandem treatment that is set out in FCC rule 51.711(a). The Commission may also find useful a recent decision by the North Carolina Utilities Commission in an arbitration between ITC^ΔDeltacom and BellSouth in which that commission reaffirmed that geographic coverage is a proxy for equivalent functionality:

[W]e believe the language in the FCC's [Local Competition] Order treats geographic coverage as a proxy for equivalent functionality, and that the concept of equivalent functionality is included within the requirement that the equipment utilized by both parties covers the same basic geographic area.¹⁰

Q. IS ADELPHIA PREPARED TO PRESENT EVIDENCE OF EITHER GEOGRAPHIC COVERAGE OR (IF THE COMMISSION REQUIRES IT) FUNCTIONAL EQUIVALENCY?

A. Not at this time. As I indicated in my earlier testimony, Adelphia is in the early stages of its network deployment and thus is not prepared to make a factual showing with respect to the geographic coverage of its switch. However, the contract language should establish the specific factual showing that Adelphia

¹⁰ See *Petition by ITC^ΔDeltaCom Communications, Inc. for Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. P-500, Sub 10, Order Ruling On Objections, Request For Clarification, Reconsideration, and Composite Agreement at 5-6 (N.C.U.C., July 25, 2000).

would have to make at a later date when it believes it is entitled to tandem switching compensation.

Q. MR. RUSCILLI CONTENDS THAT ADELPHIA'S PROPOSAL WOULD ALLOW IT TO "UNILATERALLY DECLARE" THAT IT WAS ENTITLED TO TANDEM COMPENSATION. IS THIS ACCURATE?

A. No. Under Adelphia's proposal, the contract would establish the factual conditions under which Adelphia would be entitled to request tandem compensation. If BellSouth disputed Adelphia's claim that the conditions were satisfied, then (as in the case of any other dispute arising under the contract) BellSouth would have the right to bring the issue before this Commission for a determination.

ISSUE 6 – HOW SHOULD THE PARTIES DEFINE THE POINTS OF INTERFACE FOR THEIR NETWORKS?

Q. WHAT IS YOUR UNDERSTANDING OF BELL SOUTH'S "POI" PROPOSAL?

A. BellSouth is proposing that it could establish a new POI in every BellSouth local calling area, in its unilateral discretion, and require Adelphia to bear the cost of transporting traffic from all of those POIs back to its switch. As I testified in my direct testimony, this proposal has no foundation in the Act or the FCC orders implementing the Act. Granting such unfettered authority would enable BellSouth to impose additional costs and network inefficiencies on Adelphia, and would only serve to help its transition from a *de jure* monopoly to a *de facto* monopoly. Under its proposal, BellSouth could unilaterally designate additional POIs, thereby imposing additional costs on Adelphia, even when network utilization

1 levels and sound engineering principles do not justify the designation of addi-
2 tional POIs.

3 I reiterate that the ILEC should not be permitted to impose interconnection
4 requirements that require CLECs to duplicate the ILEC's legacy network architec-
5 ture. Rather, new entrants should be free to deploy least cost, forward-looking
6 technology. The only physical advantage David had over Goliath was that his
7 small size allowed him to be mobile and agile. The same holds true for CLECs,
8 initial interconnection at the tandem level and at a single POI per LATA is crucial
9 to providing new entrants this flexibility. For a new entrant to begin service, it re-
10 quires a single connection capable of handling all of its calls, including local, toll,
11 and access traffic. Once again, Adelphia agrees that sound engineering princi-
12 ples may eventually dictate that Adelphia add new POIs at other BellSouth
13 switches.

14 **Q. MR. RUSCILLI ARGUES THAT ADELPHIA MAY ONLY DESIGNATE POIs**
15 **FOR ITS OWN ORIGINATED TRAFFIC AND THAT BELL SOUTH MAY DES-**
16 **IGNATE POIs FOR ITS ORIGINATED TRAFFIC. IS THIS CONSISTENT WITH**
17 **THE FEDERAL TELECOM ACT?**

18 **A.** No. Section 251(c)(2) of the Act requires ILECs such as BellSouth "...to provide,
19 for the facilities and equipment of any requesting telecommunications carrier, in-
20 terconnection with the local exchange network...(B) at any technically feasible
21 point within the carrier's network.". As cited in my direct testimony, in the recent
22 FCC order approving Southwestern Bell's entry into the Texas long distance

1 market, the FCC stated, "Section 251, and our implementing rules, require an in-
 2 cumbent LEC to allow a competitive LEC to interconnect at any technically feasi-
 3 ble point. This means that a competitive LEC has the option to interconnect at
 4 only one technically feasible point in each LATA." See *FCC 271 Order in SBC*
 5 *Proceeding in Texas* – CC Docket No. 00-65; Released June 30, 2000 at para-
 6 graph 78. Furthermore, though Mr. Ruscilli's testimony tries to evade the actual
 7 language and import of the FCC's rulings on this subject, in its Local Competition
 8 Order, the FCC found that Section 251(c)(2) grants competing carriers such as
 9 Adelphia the right to choose the POI. See *FIRST REPORT AND ORDER*, CC
 10 Docket No. 96-98 and CC Docket No. 95-185 (released August 8, 1996).¹¹ Fi-
 11 nally, in affirmation of these decisions, the FCC submitted an amicus curiae brief
 12 on this very point in an interconnection appeal before the United States District
 13 Court for the District of Colorado, a copy of which was filed with my direct testi-
 14 mony.

15 Contrarily, this same right was not extended to ILECs such as BellSouth.
 16 As I discussed on direct, that right is limited to new entrants and does not extend
 17 to ILECs. Once again, the FCC explained, in part, why this right is provided to
 18 the CLECs and not to the ILECs at paragraph 218 of the Local Competition Or-
 19 der, wherein it states, "Given that the incumbent LEC will be providing intercon-

¹¹ First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325 (rel. Aug. 8, 1996), modified on recon., 11 FCC Rcd 13042 (1996), vacated in part, *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), rev'd in part, aff'd in part sub nom. *AT&T Corp. v. Iowa Utils. Bd.*, 119 S.Ct. 721 (1999), on remand to *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000) ("Local Competition Order").

1 nection to its competitors pursuant to the purpose of the 1996 Act, the LEC has
2 the incentive to discriminate against its competitors by providing them less favor-
3 able terms and conditions of interconnection than it provides itself." Further,
4 economics literature regularly discusses the fact that a firm, such as BellSouth,
5 may benefit from strategic behavior that raises its rivals' costs.¹² As I discussed
6 on direct, the adoption of BellSouth's proposal regarding the deployment of POIs
7 creates the real danger that BellSouth will use the ability to establish POIs to im-
8 pede competition. The creation of competition was deemed in the public interest;
9 indeed such public interest was the catalyst behind the Telecommunications Act
10 of 1996. Logically, any proposal that stifles competition would not be in the pub-
11 lic interest.

12 Finally, the true anti-competitive effect of adopting BellSouth's proposal is
13 evidenced by the fact that, not only does it erode the advantage given by the Act
14 to help level the playing field and off-set the advantage enjoyed by over one-
15 hundred years of monopoly, it actually seeks to impose greater obligations on
16 Adelphia than it does on BellSouth. If Adelphia cannot require BellSouth to inter-
17 connect at a point outside of BellSouth's network, the converse should certainly
18 be true.

¹² See, Carlton and Perloff, Modern Industrial Organization, Third Edition, Addison-Wessley, 2000.

1 Q. CAN YOU RESPOND TO MR. RUSCILLI'S CONTENTION THAT BELL SOUTH
2 HAS MANY "DISTINCT" LOCAL NETWORKS PER LATA AND THAT ADEL-
3 PHIA MUST BUILD OR LEASE FACILITIES TO CONNECT TO EACH ONE?¹³

4 A. I'm afraid that BellSouth's description of its "distinct" local networks is pure
5 nonsense. BellSouth's intraLATA networks consist of tandem switches, end of-
6 fice switches, and trunks connecting them. Further, each of these facilities has
7 different levels of intelligence and information, which makes them dependent
8 upon each other for managing the network functionalities. All these facilities are
9 interconnected throughout the LATA; there is not (either in reality or in any kind
10 of functional model) a separate network for each local calling area.

11 Incidentally, Mr. Ruscilli's description of BellSouth's network seems at
12 odds with the Chairman and CEO's views of BellSouth's network. At a recent
13 speaking engagement, BellSouth Chairman and CEO, Mr. Duane Ackerman
14 boasted about the integrated nature of BellSouth's wireline network, especially as
15 it relates to data, saying that BellSouth's network is "the most robust local net-
16 work in the U.S., if not the world", and that the network is "not about a series of
17 stand-alone internet data centers", but "about an integrated e>business network
18 platform, available to all of our customers wherever they are". Mr. Ackerman at-
19 tributes BellSouth's ability to provide advanced services to its customers to the
20 integration of its existing network facilities consisting of "Internet points-of-

¹³ See Testimony of John A. Ruscilli at pages 64-65(hereinafter "Ruscilli").

presence, central offices, SONET rings and Fast Packet switches".¹⁴ Clearly, the network about which Mr. Ackerman is speaking is not plagued by the limitations Mr. Ruscilli suggests in his testimony.

Q. IN HIS TESTIMONY MR. RUSCILLI INDICATES THAT BELL SOUTH DOES NOT OBJECT TO ADELPHIA INTERCONNECTING AT A SINGLE POINT OF INTERCONNECTION.¹⁵ DOES THIS ALLEVIATE ADELPHIA'S CONCERNS?

A. No, it does not, nor is Mr. Ruscilli's testimony consistent with BellSouth's new proposed language at Section 1.7 of the interconnection agreement which would allow BellSouth to designate multiple points of interconnection in each BellSouth local calling area. Having this ability to pick and choose the points at which Adelphia would be forced to interconnect with the BellSouth network would have serious negative consequences on Adelphia, and would transfer to BellSouth the decisions on how Adelphia deploys its network in South Carolina, (assuming that under the conditions proposed by BellSouth, Adelphia would find it economically feasible to continue to compete in South Carolina at all), without regard to whether such points of interconnection were the most efficient points at which Adelphia could exchange traffic with BellSouth. Not only would the language proposed by BellSouth be altogether inconsistent with the Act and FCC regulations, which obligate BellSouth to provide interconnection for Adelphia facilities at points designated by Adelphia, but such language would also severely limit Adel-

¹⁴ Remarks of Duane Ackerman at the Goldman Sachs 2000 Communicopia IX Conference, October 4, 2000.

¹⁵ See Ruscilli at page 49.

phia's ability to expand existing networks and to enter new markets in South Carolina. This limiting language is entirely inconsistent with what the FCC and Congress intended for ILEC interconnection obligations to accomplish, that being, "to pave the way for the introduction of facilities-based competition with incumbent LECs".¹⁶

Q. ARE BELLSOUTH'S POSITIONS AS STATED BY MR. RUSCILLI IN HIS TESTIMONY CONSISTENT WITH FEDERAL LAW AND FCC REGULATIONS?

A. No. By not objecting to Adelphia's interconnecting at a single point, but then adding additional, overly burdensome cost restrictions, BellSouth is plainly trying to skirt the clear intent of the Act and the FCC's interconnection rules. As noted above, the FCC states very clearly at ¶ 172 of the *Local Competition Order* that competing carriers may choose the most efficient points at which to exchange traffic with incumbent LECs thereby lowering the competing carriers' cost of among other things, transport and termination of traffic. Further, the FCC has noted that to require multiple interconnection points would be so costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to competition.

BellSouth's position misleadingly appears to comply with the FCC's standards, by saying that Adelphia may choose a single POI, but by imposing additional costly restrictions on such interconnections, BellSouth is at odds with

¹⁶ FCC First Report and Order, CC Docket No. 96-98 and CC Docket No. 95-185, ¶ 172.

the spirit of the FCC regulations, and is essentially barring the pathway to entry the FCC envisioned.

Q. MR. RUSCILLI CLAIMS THAT THE FCC'S LOCAL COMPETITION ORDER ESTABLISHED THAT CLECS DO NOT HAVE THE RIGHT TO ESTABLISH THE POI FOR ILEC-ORIGINATED TRAFFIC. IS THIS INTERPRETATION REASONABLE, IN YOUR OPINION?

A: No, Mr. Ruscilli's citation to this material is incomplete and provides a misleading picture of what the FCC said. Mr. Ruscilli cites the FCC's rejection of a proposal by MCI that "the Commission . . . require incumbents and competitors to select one [POI] on the other carrier's network at which to exchange traffic." (See *Local Competition Order* at paras 214, 220). While quoting liberally from the order, Mr. Ruscilli curiously omits the FCC's explanation for its rejection: that 251(c)(2) "does not impose on non-incumbent LECs the duty to provide interconnection." (See *Id.* at para. 220.) Mr. Ruscilli further omits reference to a crucial footnote that occurs at the end of a quote that Mr. Ruscilli includes in his testimony. The full excerpt is as follows with text omitted by Mr. Ruscilli in italics:

We also conclude that MCI's POI proposal, permitting interconnecting carriers, both competitors and incumbent LECs, to designate points of interconnection on each others networks, is at this time best addressed in negotiations and arbitrations between the parties. [FN 464]

[FN 464] *Of course, requesting carriers have the right to select points of interconnection at which to exchange traffic with an incumbent LEC under section 251(c)(2).*

Local Competition Order at para 220. The full FCC discussion makes clear that only "requesting carriers," i.e., CLECs, have the *right* to select points of intercon-

1 nection, a right that forms the backdrop for their possible negotiation with ILECs
2 for alternative arrangements.

3 **Q: AS IT IS DESCRIBED BY MR. RUSCILLI, BELL SOUTH'S POSITION PRO-**
4 **VIDES ADELPHIA WITH FLEXIBILITY TO DESIGN ITS NETWORK ANY WAY**
5 **IT WISHES. IS THIS AN ACCURATE CHARACTERIZATION?**

6 A. No. Each of the options described by Mr. Ruscilli at page 76 of his testimony
7 creates only the fiction of flexibility. The options he identifies would only create
8 financial burdens for Adelphia that were not intended by the FCC. In each in-
9 stance, Adelphia would be faced with the prospect of incurring tremendous costs
10 in order to provide service to its customers. These additional and unwarranted
11 costs constitute a barrier to Adelphia's entry into the local market in South Caro-
12 lina, and serve to protect BellSouth's existing customer base. The language pro-
13 posed by BellSouth is therefore clearly at odds with the stated intent of the FCC
14 when it developed its interconnection rules in order to comply with Congress's
15 goal of creating conditions the will facilitate the development of competition in the
16 telephone exchange market.¹⁷

¹⁷ *Id.* ¶ 179.

Q. MR. RUSCILLI TESTIFIES THAT ADELPHIA SHOULD BE FINANCIALLY RESPONSIBLE FOR COSTS THAT RESULT FROM CARRYING CALLS FROM LOCAL CALLING AREAS LOCATED WITHIN THE BELL SOUTH NETWORK TO ADELPHIA'S POINT OF INTERFACE. DO YOU AGREE?

A. No. Each Party must be financially and operationally responsible for traffic and facilities on its respective side of the interconnection point. What BellSouth is doing is asking the Commission to force Adelphia to pay for facilities that are located on the BellSouth side of the interconnection point. In other words, BellSouth is proposing that Adelphia pay BellSouth when BellSouth customers use the BellSouth network. Mr. Ruscilli testifies that if BellSouth is not compensated by Adelphia, that BellSouth would have to "eat" these costs. I find this characterization to be misleading. The appropriate arrangement is very clear: It is BellSouth's responsibility to get the call to Adelphia's POI. BellSouth switches and transports the call to the POI. From the POI, Adelphia is responsible for terminating the call for BellSouth - again, switching and transporting the call to the called party, wherever that party might be located.

Q. MR. RUSCILLI APPEARS TO INDICATE IN HIS TESTIMONY AT PAGES 68-69 THAT THESE COSTS ARE NOT RECOVERABLE BY BELL SOUTH. IS THAT TRUE?

A. No. Mr. Ruscilli's testimony in this area is also misleading since BellSouth is compensated for its portion of the call through local rates, vertical features (i.e., call waiting, call forwarding, - last number redial, call rejection, speed calling,

anonymous call rejection, continuous redial, etc.), EAS arrangements, subscriber line charges and other subsidies, such as access charges, that support local rates. Given the existence of these profit centers, the Commission should not be distracted into thinking that BellSouth will not recover the costs associated with compliance with these FCC regulations.

Q. WHAT ARE THE COMPETITIVE CONSEQUENCES OF BELL SOUTH'S PROPOSAL?

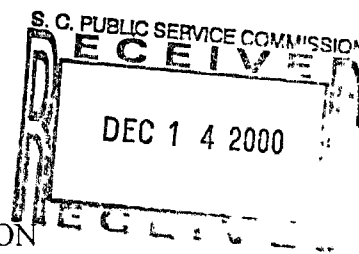
A. BellSouth's proposal would have negative impacts on competition in South Carolina, and limit South Carolina citizens' access to advanced services. BellSouth's proposal would serve to increase Adelphia's costs of entering the market in South Carolina, either by forcing Adelphia to establish multiple points of interconnection with BellSouth, or by foisting other additional costs onto Adelphia. These costs are clearly an economic barrier to entry in South Carolina, and serve to artificially protect BellSouth's existing market share.

As Adelphia evaluates its plans to enter markets around the country, it undoubtedly considers such costs. If Adelphia has to bear not only its own costs associated with entering the market, but also the additional costs that BellSouth seeks to impose, South Carolina may become a lower priority state for Adelphia--and most likely for other CLECs, as well. Under these circumstances, Adelphia's presence would be diminished in South Carolina, and South Carolina citizens would not benefit from this provider's presence in the market and the services it offers.

Docket No. 2000-516-C
Adelphia Business Solutions Operations, Inc.

Rebuttal Testimony
Timothy J Gates

- 1 **Q. WHAT IS THE SOLUTION TO THIS PROBLEM?**
- 2 A. The Commission should adopt Adelphia's position.
- 3 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**
- 4 A. Yes, it does.



STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the petition of)	
COAST TO COAST TELECOMMUNICATIONS,)	
INC., for arbitration of interconnection rates,)	Case No. U-12382
terms, conditions, and related arrangements with)	
MICHIGAN BELL TELEPHONE COMPANY,)	
d/b/a AMERITECH MICHIGAN.)	
<hr/>		

At the August 17, 2000 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

ORDER ADOPTING ARBITRATED AGREEMENT

On February 12, 2000, Coast to Coast Telecommunications, Inc., (Coast) filed a petition seeking arbitration of an interconnection agreement with Ameritech Michigan pursuant to Section 252 of the federal Telecommunications Act of 1996 (the federal Act), 47 USC 252, the federal rules promulgated pursuant to the federal Act, and the Commission's July 16, 1996 order in Case No. U-11134, which established procedures for arbitrating interconnection agreements. According to the petition, the parties are currently operating under an interconnection agreement executed on

March 17, 1997 and approved by the Commission on June 25, 1997 in Case No. U-11375.¹ The petition listed 40 issues.

On April 19, 2000, Administrative Law Judge George Schankler appointed himself, Tom Saghy, and Margaret Wallin to the arbitration panel.

On May 8, 2000, Ameritech Michigan filed a response to the petition, in which it raised two additional issues.

On May 22, 2000 the parties submitted a joint filing that set out the proposed contract language in dispute and provided a status matrix of issues. That matrix revealed that little progress had been made in negotiations. On May 24, 2000, the panel met with the parties and directed them to meet (with each side represented by persons with authority to agree to terms) in an effort to resolve some of the numerous outstanding issues. That meeting occurred on June 1, 2000 after which the number of issues had been reduced to 10.

On June 8, 2000, the parties presented their respective positions before the arbitration panel concerning specific issues for which the panel had requested presentations. At that time, the parties indicated that two additional issues had been resolved. Following their presentations, the parties each filed a Proposed Decision of the Arbitration Panel (PDAP) on June 20, 2000, which indicated that an additional issue had been resolved. On July 5, 2000, the arbitration panel issued the Decision of the Arbitration Panel (DAP).

On July 17, 2000, Ameritech Michigan filed objections to the recommendations of the arbitration panel on which it did not prevail. Those issues are addressed below.

¹ The three-year term of that agreement has been extended pursuant to the May 1, 2000 amendment (the third amendment), which was approved by the Commission on June 5, 2000.

Additional Points of Interconnection

The parties disagreed concerning whether Ameritech Michigan should be permitted to require Coast to allow additional points of interconnection at any Coast central office upon written notice from Ameritech Michigan that it would do so. Coast objected to Ameritech Michigan's proposed language because it desired to retain the right to review requests for interconnection prior to implementation. The panel agreed with Coast on this issue, based on its determination that Coast should be permitted to retain a right to review any proposed interconnections to its network. The panel further stated its belief that, as a practical matter, Ameritech Michigan would be able to interconnect with Coast in a manner that meets its needs, but that should a dispute arise, Ameritech Michigan could bring the issue before the Commission for resolution.

Ameritech Michigan objects and argues that the panel failed to adequately consider the lack of merit to Coast's opposition to Ameritech Michigan's proposed language. Ameritech Michigan argues that Coast's objections are without substance and that any costs to Coast would be minimal. It states that Coast's original objection to this language, its belief that Ameritech Michigan might impose on Coast the obligation to create a joint fiber meet, is dispelled by noting contract language requiring both parties' agreement for joint fiber meets. Ameritech Michigan argues that Coast's admitted preference that additional trunks come directly from an end office rather than from the tandem should have led the panel to adopt Ameritech Michigan's language.

Ameritech Michigan further argues that the panel failed to consider or address the legal arguments that Ameritech Michigan raised. The company maintains that the federal Act does not preclude Ameritech Michigan from connecting an additional switch in its network to the parties' existing points of interconnection. Moreover, Ameritech Michigan argues, it has a right under the federal Act to retain responsibility for the management, control and performance of its own

network.” FCC First Report and Order, ¶203.² In order for it to fully realize that right, Ameritech Michigan argues, the proposed language must be included in the contract. Moreover, Ameritech Michigan argues, this language merely makes additional interconnections equally available to both parties.

Finally, Ameritech Michigan argues that if the Commission allows this result to stand, Ameritech Michigan will be forced to negotiate or litigate with each competitive local exchange carrier (CLEC) on the design of Ameritech Michigan’s network. It projects that a CLEC could arbitrarily refuse to allow Ameritech Michigan to establish appropriate network connections, which, Ameritech Michigan argues, would negatively affect network design and reliability.

The Commission finds that the arbitration panel appropriately rejected Ameritech Michigan’s arguments and adopted Coast’s position on this issue. As noted by the Federal Communications Commission (FCC), Section 251 of the federal Act imposes additional requirements on incumbent local exchange carriers (ILEC), including the requirement to permit interconnection at any technically feasible point on the ILEC’s network. See 47 USC 251(c). Ameritech Michigan cites no similar provision for CLECs.

Although Ameritech Michigan argues that its only intentions are to protect its network functioning, the language it proposed did not limit its ability to demand interconnection to instances in which such interconnection is needed or desirable for handling local traffic. Rather, Ameritech Michigan proposed language that would give it absolute power to determine whether additional interconnection is necessary. There is no limiting language requiring the request to be reasonable or supported by any particular criteria. The Commission finds that Ameritech Michi-

² In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC Order No. 96-325, 11 Fccr 15449 (1996).

gan's proposed broad language is not required for it to maintain control of its network. Although Ameritech Michigan is correct that there is no provision in the Act that would prohibit incorporating this provision in the interconnection agreement, the company cites no provision that would require allowing the ILEC to impose unwanted interconnection on the CLEC at the former's unfettered discretion.

Foreign Exchange (FX) Service

As described in the DAP, FX service allows a customer to obtain an NXX code³ for a geographic area different from the area where the customer is actually located. Calls made from persons in the geographic area assigned to that NXX code are able to reach the FX customer for the price of a local call because Ameritech Michigan's billing system recognizes intra-NXX calls as local. Ameritech Michigan took the position that its "Appendix FX" should be added to the contract. That appendix would require either that Coast compensate Ameritech Michigan for these calls and remove them from the category of calls for which Ameritech Michigan pays reciprocal compensation or that Coast establish a point of interconnection in each local calling area associated with an NXX assigned to a Coast FX customer. In that manner, Ameritech Michigan argued, the costs of interexchange transport will be borne appropriately by Coast and its FX customer.

The arbitration panel rejected Ameritech Michigan's position. It reasoned that the following facts supported its decision:

1. Coast currently provides service to its customers through one switch, which is located in Pontiac. This current configuration is authorized under [the federal Act].

³ The NXX code is the first three digits of the seven-digit telephone number.

2. Ameritech [Michigan] is obligated to deliver all of Coast's traffic to its Pontiac switch.
3. Ameritech [Michigan]'s billing system identifies NXX to NXX calls as local and cannot distinguish such calls by ultimate destination.
4. Ameritech agrees that it incurs no additional costs related to what it refers to as FX calls under the current Coast configuration. (Tr. 60)
5. Ameritech [Michigan] admits that "There's been a definition of a local call. From NXX to NXX is a local call." (Tr. 64)

DAP, pp. 9-10.

The arbitration panel noted that because all calls terminated on Coast's network must be delivered to Coast's switch in Pontiac, the costs to Ameritech Michigan to deliver an FX call to Coast is the same as when the call is undisputedly local. Thus, the panel reasoned, Ameritech Michigan's argument that Coast receives a free ride for FX service must be rejected, citing the May 8, 2000 decision of the Illinois Commerce Commission (ICC) regarding an arbitrated agreement between Focal Communications Corporation of Illinois (Focal) and Ameritech Illinois. The panel further noted Coast's stated plans to build additional facilities, which the panel believed would alleviate some of Ameritech Michigan's concerns. Finally, the arbitration panel rejected Ameritech Michigan's alternative that Coast should be required to establish an additional point of interconnection (POI) in each area for which it has an NXX that it has assigned to an FX customer.

Ameritech Michigan objects to the arbitration panel's conclusions and argues that the panel effectively ruled that Ameritech Michigan must (1) forgo intraLATA toll revenues to which it would otherwise be entitled, (2) pay for the transport of what is marketed as a local call, but is not truly a local call, and (3) continue to pay reciprocal compensation on what is actually an interexchange call. Ameritech Michigan claims that each of these effects is erroneous and contrary to law.

Ameritech Michigan states that although it does not dispute the truth of the facts relied upon by the arbitration panel in reaching its decision, it does dispute the relevance of those facts. In Ameritech Michigan's view, FX service is not local exchange service, but is an interexchange service and should be rated as such between carriers. It cites and heavily relies upon the reasoning of the Maine Public Utilities Commission (Maine PUC) in New England Fiber Communications, LLC, d/b/a Brooks Fiber, Docket No. 99-593, issued June 30, 2000.

Ameritech Michigan reiterates that these are essentially toll calls that merely look like local calls to the end-user because of the assignment of the NXX associated with the area. Ameritech Michigan states that the FX customer customarily bears the cost of the FX service, because it is the party benefitting from the fiction that toll calls to it appear to the calling party to be local. When transporting calls across two networks, argues Ameritech Michigan, the carrier providing the FX service compensates the originating carrier for the use of its network in provisioning the FX service and then charges its FX customer accordingly.

As in the Maine case, Ameritech Michigan argues, Coast does not create a different, greater local area through its FX service, nor does it provide competing local exchange service in any meaningful sense. Ameritech Michigan urges the Commission to hold, as the Maine Commission did, that the CLÉC "is free to offer calling areas of its own design so long as, when it uses the facilities of others to accomplish that end, it pays for those facilities on the basis of how their owners define them for wholesale purposes (interexchange or local). . . . What Brooks is doing . . . is offering free interexchange calling to customers of other LÉCs . . . in effect attempting to redefine the local calling areas of other LÉCs." *Id.*, p. 14.(emphasis in original.) Ameritech Michigan argues that the Commission should not equate the rating of calls for end-users with the appropriate rating of calls between carriers. It argues that merely because Coast may not charge

the caller for this FX service does not require a finding that Coast should not pay for the service provided by Ameritech Michigan to permit the call to be completed.

Ameritech Michigan goes on to state that if the arbitration panel's result is adopted, Coast will enjoy an unfair competitive advantage. It argues that Coast may offer FX service to information service providers (ISPs) or other customers for much less than other carriers can, because it will not be paying the full costs of the service. Moreover, although Coast stated it has plans to expand its number of POIs in Michigan, the result reached by the arbitration panel will create a disincentive for Coast to implement those plans.

Finally, Ameritech Michigan argues that the precedents relied upon by the arbitration panel are distinguishable from the instant case. It points out that the ICC decision does not address the Appendix FX, which Ameritech Michigan seeks to have added to the contract in this case. Moreover, Ameritech Michigan argues, the Commission's April 12, 1999 decision in Case No. U-11821, a complaint case involving CenturyTel, does not dictate the arbitration panel's result. In that case, argues Ameritech Michigan, the Commission fined CenturyTel for violating its tariffs when it billed the end-user for toll charges associated with her ISP traffic to an adjacent exchange, despite the tariff's listing that NXX as local. In that context, says Ameritech Michigan, the Commission found that routing and rating need not be the same. But, Ameritech Michigan argues, the decision relates to the CLEC's relationship to the end-user. Likewise, says Ameritech Michigan, the Commission's February 22, 2000 order in Case No. U-12090, a complaint case involving Coast and GTE North Incorporated (GTE), does not relate to FX service and relies upon GTE's local calling tariffs for the premise that a call made by a GTE end-user to the Coast ISP customer located within GTE's extended area service (EAS) area should be rated as a local call, regardless of how it is routed. Ameritech Michigan points out that, in the present case, the issue

relates to the appropriate compensation between carriers, not end-users, and there is neither an interconnection agreement nor a tariff to determine how these calls should be rated.

The Commission finds that the arbitration panel's decision on this issue should be affirmed. Commission precedent on the issue of the appropriate rating of a call to a customer located outside the geographic area associated with the NXX assigned to that customer has consistently found that intra NXX calls are to be considered local for rating purposes, despite their actual routing. See, the April 12, 1999 order in Case No. U-11821, Bierman v CenturyTel of Michigan, Inc., and the February 22, 2000 order in Case No. U-12090, Coast to Coast v GTE North Incorporated et al.

The arbitration panel adopted the reasoning of the ICC in its May 8, 2000 decision involving an arbitration agreement between Focal and Ameritech Illinois. In that case, Ameritech Illinois requested language that would have required Focal to establish a point of interconnection within 15 miles of the rate center for any NXX code that Focal used to provide FX service. The ICC determined that nothing in state or federal law required adoption of the proposal and it rejected Ameritech Illinois' arguments concerning the alleged "free ride" that Focal would obtain without the requirement. That free ride argument appears to be the same as one of the arguments that Ameritech Michigan poses in this case. In the ICC's view, the manner in which the parties currently handle traffic belied Ameritech Illinois' argument, because Ameritech Illinois would not be required to carry traffic any further or incur any extra expense based on the nature of the call being FX service. Rather, Ameritech Illinois delivers the call to the point of interconnection associated with the NXX, after which, Focal delivers the call to the FX customer, wherever that customer might be located.

Contrary to Ameritech Michigan's assertions, the DAP reflects the arbitration panel's adoption of the ICC's reasoning that there is really no free ride to remedy, and thus, no compelling reason to

incorporate the proposed language. Admittedly, the ICC did not address the Appendix FX proposed in this case. But both the proposed Appendix FX and the alternative of requiring a POI within a short distance of a rating center for which the CLEC obtains an NXX are intended to address the same perceived problem, which the ICC held did not exist as a practical matter.

The Commission is not persuaded that it should follow the result of the Maine PUC's decision concerning Brooks Fiber (Brooks). In its June 30, 2000 order, the Maine PUC determined that 54 NXXs that had been assigned to Brooks should be returned to the North American Numbering Plan Administrator (NANPA) because, in the Maine commission's view, those NXXs were not being used to provide local exchange service. Rather, Brooks was using those NXXs to allow customers, located in areas from which a call to Portland would be a toll call, to reach an ISP located in Portland by dialing a "local number." Brooks desired to have these calls treated as local, both for the originator of the call and for purposes of determining the appropriate compensation between Brooks and the ILEC. The Maine PUC found that Brooks was not providing a broader area for legitimate basic local exchange service, but rather was attempting to redefine the local calling area of another LEC by merely changing the designation of what would otherwise be interexchange calls through this "FX-like" service. It stated that if Brooks desired to provide a local calling area greater than that afforded by the ILEC, Brooks must compensate the ILEC for use of the network.

That decision is contrary to the position that this Commission has previously taken. See, the Commission's June 25, 1997 order in Case No. U-11340, in which the Commission found that Ameritech Michigan's historic boundaries for local calling should not dictate what may constitute a local calling area for competing providers and that calls within calling areas established as local by the CLEC should be treated as local for reciprocal compensation purposes. Ameritech

Michigan's arguments suggest that Coast is not providing local exchange service to an expanded local area, but using this service to retain ISPs as customers. However, the Commission notes that under the amended version of the Michigan Telecommunications Act, MCL 484.2101 et seq., MSA 22.1469 (101) et seq., basic local exchange licensees must, within two years, market basic local exchange service to all persons located within the geographic area for which the provider has a license, or risk losing the license or having its geographic area restricted. See, MCL 484.2303(1); MSA 22.1469(303)(1). Although MCL 484.2203(16); MSA 22.1469(203)(16) provides that the new law does not "amend, alter, or limit" any case commenced before its effective date, the interconnection agreement will take effect after the new law and Coast will be required to comply with MCL 484.2303(1); MSA 22.1469(303)(1).

The Commission finds that the arguments raised by Ameritech Michigan concerning the likely effect of the Commission's holdings on a competitive environment may deserve further study. However, it would be unwise for the Commission to reverse its position on this issue in an arbitration case, without the ability to grant other parties that might be significantly affected by such a reversal an opportunity to participate. Additionally, the Commission notes that a portion of the recent amendments to the MTA requires that calls made to a local calling area adjacent to the caller's local calling area shall be considered a local call and shall be billed as a local call. MCL 484.2304(11); MSA 22.1469(304)(11). The appropriate implementation of this provision is currently the subject of Commission proceedings in Case No. U-12528, which was commenced by the Commission's July 17, 2000 order. The conclusions reached in that case may affect the Commission's position concerning the appropriate treatment and rating for FX and ISP calls.

Reciprocal Compensation for ISP Traffic

The parties disagreed about whether compensation between carriers should be paid on ISP traffic. Coast took the position, supported by substantial Commission precedent, that calls to ISPs within the local calling area are local calls requiring reciprocal compensation. Ameritech Michigan took the position that the FCC's decisions require finding that calls to ISPs are not local calls because they terminate on the internet, not within the local calling area. Thus, it argued, the reciprocal compensation provision in 47 USC 251(b)(5) does not apply.

The arbitration panel indicated that its review of previous Commission orders on this point led to the conclusion that calls to ISPs within the local calling area are local calls for purposes of reciprocal compensation between carriers. In the panel's view, because the Commission has continuously and repeatedly found in favor of the position taken by Coast, there was no reason to adopt Ameritech Michigan's language on this issue.

Ameritech Michigan objects and argues that the arbitration panel's decision should be reversed. It argues, as it has in prior cases, that the reciprocal compensation duty of 47 USC 251(b)(5) does not apply to ISP traffic, because the FCC has ruled that ISP traffic does not originate and terminate in the same local exchange area, but instead is predominantly interstate traffic. It also reiterates its arguments that the Commission does not have jurisdiction to determine whether these calls are local and thus subject to reciprocal compensation, because the FCC has exclusive jurisdiction over the issue. Moreover, Ameritech Michigan argues that despite whatever decision the Commission may make, the final outcome of the pending FCC Docket 99-68 , In the

matter of Inter-Carrier Compensation for ISP-Bound Traffic,⁴ will control the parties' conduct.

Further, Ameritech Michigan argues, no reciprocal compensation should be required on this traffic based on cost causation principles. Ameritech Michigan insists that when a call is placed to an ISP, it is the ISP that is the cost causer, not the originator of the call.

The Commission finds that the arbitration panel's conclusions with regard to this issue should be affirmed. In its January 28, 1998 order in Cases Nos. U-11178 et al., the Commission held that calls to ISPs within the local calling area are local calls. Thus, the Commission found, reciprocal compensation was required under the interconnection agreements at hand. The Commission's determination that calls to ISPs located within the local calling area are local calls for purposes of reciprocal compensation has been repeated in later orders. See, e.g., the Commission's April 12, 1999 order in Case No. U-11821, the February 22, 2000 order in Case No. U-12090, and the June 5, 2000 order in Case No. U-12284. In those orders, the Commission rejected Ameritech Michigan's arguments that the Commission lacks jurisdiction over this issue and that calls to ISPs are not local, including Ameritech Michigan's argument that the FCC's February 26, 1999 decision in CC Docket 96-98 supports the ILEC's position on this issue. Specifically, the Commission's February 22, 2000 order in Case No. U-12090, at pp. 4-6 fully addressed this argument, finding it baseless. See also, the Commission's June 5, 2000 order in Case No. U-12284, pp. 4-7. Ameritech Michigan raises no new arguments that persuade the Commission to reach a different conclusion in this case. The fact that the present case is an arbitration agreement rather than a

⁴The FCC's February 26, 1999 decision in Declaratory Ruling in CC Docket 96-98 and Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 99-38, in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket 96-98, vacated and remanded in Bell Atlantic Telephone Companies v FCC, 206 F 3d 1 (DC Cir, 2000).

complaint seeking interpretation of a tariff or interconnection agreement provision does not alter the basis for finding that ISP calls within the local calling area are local for purposes of rating and intercarrier compensation. The Commission acknowledges that the parties could have reached an agreement not to compensate each other for these calls. However, they did not, and the Commission finds that it should not impose such a provision on Coast.

Finally, Ameritech Michigan complains that the arbitration panel failed to address the issue of the appropriate rate for intercarrier compensation for ISP calls. It insists that any compensation for this traffic should be lower than the reciprocal compensation for terminating voice calls because it costs Coast less to deliver Internet traffic to its ISP customers than it costs either party to terminate local traffic to non-ISP customers. Ameritech Michigan states its belief that the compensation rate should be zero, or a declining rate that, over a 12-month period, would be reduced to zero.

As a separate alternative, Ameritech Michigan argues that the Commission should, either in this case or a separate docket, examine and set the appropriate rates for ISP calls, the results of which should apply retroactively to the effective date of the parties' agreement. If the Commission determines a rate in this case, Ameritech Michigan argues, it should be bifurcated into two rate elements, one for initial set-up charge and the other to recover the per minute usage costs of each call. It states that based on the cost studies approved in the Commission's November 16, 1999 order in from Case No. U-11831, the rate structure should be \$.00733 for the set-up charge and \$.000778 for a per minute of use charge, or a melded charge of \$0.001034 per minute, which assumes an average holding time of 28.7 minutes per call. See Verified Statement of Eric L. Panfil, p. 17. Additionally, Ameritech Michigan took the position that Coast should not receive the tandem switching and transport rate associated with this traffic, because Coast generally serves

ISPs that are either located very close to its switch or collocated at the switch itself. Thus, Ameritech Michigan argued, Coast does not incur transport costs of any significance.

The arbitration panel rejected Ameritech Michigan's alternative positions. In the panel's view, arbitration procedures require the panel to choose between the two positions of the parties, not an array of alternatives. In this case, the panel chose the language proposed by Coast, and rejected the language proposed by Ameritech Michigan. It found no reason to also address the appropriate rate for these calls.

The Commission finds that the rate to be paid for reciprocal compensation for ISP calls should not be altered in this arbitration proceeding. Although Ameritech Michigan proffers numbers that it claims are "based on" its approved cost studies, the Commission notes that Ameritech Michigan did not propose a separate, lower rate for calls to its ISP customers in that case. If it sought to recognize lower per minute costs based on longer holding times for ISP calls, or to bifurcate the rate for all calls to ameliorate the difference between calls held for long periods, its latest cost study case would have been an appropriate time to examine the issue. To allow Ameritech Michigan to now alter the reciprocal compensation rate only for ISP calls would effectively sanction the company's altering only a portion of its cost studies, contrary to the directives in the Commission's November 16, 1999 order in Case No. U-11831, p. 40, in which the Commission directed that new cost studies must be proposed only for the company's entire system, except for new services. Calls to ISPs do not fall within that exception. That requirement is intended to prevent inequities associated with piecemeal changes.

Contract Services

The parties submitted several issues concerning the terms under which Coast would be allowed to assume contracts that Ameritech Michigan has with certain end-users. Among other things, Coast sought inclusion of language in the interconnection contract that would require Ameritech Michigan to produce upon request a validly executed copy of its contract with the end-user customer within 10 business days. Upon Ameritech Michigan's failure to produce a copy within the specified period, Coast argued, the contract with the end-user should be considered null and void and not binding on Coast. Coast asserted that it should not be required to assume all responsibilities under the contract without first having fair notice of what those liabilities might be.

Ameritech Michigan argued that a provision in a contract between Coast and Ameritech Michigan could not lawfully nullify a contract that Ameritech Michigan has with an end-user customer.

The arbitration panel determined that Coast should be entitled to receive a copy of any contract within 10 business days of its request. Failure to produce the contract would entitle Coast to treat the customer as a new customer, not subject to any contractual obligations or the lower assumed contract discount rate.

Ameritech Michigan objects and argues that the arbitration panel has adopted a position unsupported by law. Moreover, Ameritech Michigan argues, the issue is not even properly before the panel because it has no connection with any request for interconnection, service, or network element arising under the federal Act. In Ameritech Michigan's view, Coast should in the first instance be required to obtain a copy of the contract from the end-user customer rather than Ameritech Michigan. If the end-user customer does not have a copy, says Ameritech Michigan, the customer could contact Ameritech Michigan's retail business unit to obtain a copy. In the

alternative, Ameritech Michigan states, Coast could obtain the needed information from the customer service record at the Ameritech Michigan preordering interface.

The Commission finds that the decision of the arbitration panel should be affirmed. At the outset, the Commission finds that this is an issue properly before the arbitration panel because it deals with the terms and conditions of resale services, as provided in Section 251 of the federal Act. Moreover, the Commission finds that if, as Ameritech Michigan has argued (and the arbitration panel agreed), Coast must be willing to sign an agreement to be bound by the terms of an assumed contract between Ameritech Michigan and an end-user customer, Coast should be able to review a copy of the contract that created those obligations. Without the ability to review such a contract, Coast would be unable to determine precisely what obligations it is taking on, thus placing the CLEC in a position that might require litigating what contract rights actually exist. Further, the Commission finds that should Ameritech Michigan be unable or unwilling to produce a copy of the contract within a reasonable time (10 business days), Ameritech Michigan should not be permitted to insist on Coast's performance under that contract. Rather, under those circumstances, the Commission finds that Coast should be allowed to treat the customer as a new customer. Contrary to Ameritech Michigan's argument, this decision does nothing to alter the rights and responsibilities of the parties to the original contract for services. It merely relieves Coast of any obligation to perform under a contract that it cannot review.

Right to Purchase from Tariff or Contract

Ameritech Michigan sought inclusion of contract language that would effectively prohibit Coast from purchasing products or services that are described in Sections 251 and 252 of the federal Act, 47 USC 251 and 252, pursuant to any effective tariff. Ameritech Michigan argued that

the proposed language was necessary to prevent Coast from seeking to extend, modify, or otherwise change the terms of the contract by purchasing from a tariff products or services covered by the agreement. Further, Ameritech Michigan argued that adopting Coast's position would violate the Sierra-Mobile doctrine⁵, which Ameritech Michigan argues prevents a party to a contract from choosing different terms off a tariff. Finally, Ameritech Michigan argued that prohibiting Coast from purchasing products covered by the contract off of an Ameritech Michigan tariff would make business sense and would bring stability to the parties' business relationship.

The arbitration panel rejected Ameritech Michigan's position and found Coast's proposed language to be more reasonable and more consistent with promoting competition within the state. The panel took the position that tariffed services should be available to providers, regardless of whether there is an interconnection agreement. The panel found that adopting Coast's language would not violate the Sierra-Mobile doctrine or any other state or federal law or precedent. Moreover, the panel found that its decision was consistent with the Commission's January 3, 2000 order in Case No. U-12035 and its February 9, 2000 order in Case No. U-12043. It found Ameritech Michigan's proposed language overly broad in that it might preclude Coast from purchasing a product or service available through tariff that might be included in the cited federal Act sections, but that was not mentioned in the interconnection agreement.

The arbitration panel was unpersuaded that the language proposed by Coast would permit it to impermissibly mix terms of the agreement with terms available in a tariff. Rather, the panel pointed out that Coast would be required to choose whether to purchase products or services pursuant to all of the related terms or conditions in the contract or the applicable tariff. The panel

⁵ United Gas Pipeline Co v Mobile Gas Service Corp, 350 US 332; 76 S Ct 353; 100 L Ed 373 (1956) and FPC, v Sierra Pacific Power Co, 350 US 348; 76 S Ct 368; 100 L Ed 388 (1956).

concluded that adoption of Coast's language would likely reduce delays in Coast's ability to obtain and offer new products and services.

Ameritech Michigan objects and restates the arguments that it brought before the arbitration panel.

The Commission finds that the arbitration panel's decision should be affirmed on this issue for the reasons stated by the panel in its decision. Ameritech Michigan's arguments fail to persuade the Commission that a different result is required.

Collocation Indemnification

Coast proposed language for Section 12.10.7 of the interconnection agreement that would require Ameritech Michigan to indemnify Coast and hold it harmless for any injuries to persons or property that occur due to work performed in the collocation space by Ameritech, its employees, agents, or vendors. The proposed language mirrors and would make mutual the obligation language, in which Coast has already agreed to indemnify Ameritech Michigan. Ameritech Michigan rejected this proposed mutuality of indemnification, arguing that Coast's presence in the collocated space increases risk to Ameritech Michigan, but the fact that Coast is collocated does not increase Coast's risk.

The arbitration panel determined that the language proposed by Coast should be included in the interconnection agreement.

Ameritech Michigan objects and argues that Article 24 of the interconnection agreement, to which the parties have already agreed, protects each party against the results of negligence or intentional misconduct by the other. What Ameritech Michigan sought to protect itself against in Section 12.10.7 was a perceived additional risk not covered in Article 24. It states that Coast's

presence on Ameritech Michigan's property increases the risk of loss to Ameritech Michigan but not Coast. In fact, Ameritech Michigan states, its collocation rates do not include the costs of insuring Coast for virtually any loss in the collocation context, even without proven fault on Ameritech Michigan's part.

The Commission finds that the arbitration panel's decision making the indemnification obligation mutual should be affirmed. As the panel noted, there is a risk to Coast, once it has collocated in an Ameritech Michigan space whenever Ameritech Michigan performs work in the area. Ameritech Michigan actions that might not amount to negligence may cause great loss to the CLEC. If Coast is required to indemnify Ameritech Michigan, it is only appropriate that the obligation should be mutual. Ameritech Michigan's argument that this risk was not included in its cost study for determining collocation rates is not persuasive. Ameritech Michigan presented no evidence concerning the likely magnitude of such costs. The Commission finds that they are likely to be minimal. Moreover, it is not clear whether Coast's agreement to indemnify Ameritech Michigan would not offset any costs for Ameritech Michigan to indemnify Coast.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.
- b. The interconnection agreement proposed by the decision of the arbitration panel should be approved.

c. Within 10 days from the date of this order, the parties should file an executed interconnection agreement consistent with the DAP.

THEREFORE, IT IS ORDERED that:

A. The Decision of the Arbitration Panel is adopted.

B. Within 10 days of the date of this order, Coast to Coast Communications, Inc., and Ameritech Michigan shall submit an executed interconnection agreement that is consistent with the Decision of the Arbitration Panel.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of August 17, 2000.

/s/ Dorothy Wideman
Its Executive Secretary

c. Within 10 days from the date of this order, the parties should file an executed interconnection agreement consistent with the DAP.

THEREFORE, IT IS ORDERED that:

A. The Decision of the Arbitration Panel is adopted.

B. Within 10 days of the date of this order, Coast to Coast Communications, Inc., and Ameritech Michigan shall submit an executed interconnection agreement that is consistent with the Decision of the Arbitration Panel.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of August 17, 2000.

Its Executive Secretary

In the matter of the petition of)
COAST TO COAST TELECOMMUNICATIONS,)
INC., for arbitration of interconnection rates,)
terms, conditions, and related arrangements with)
MICHIGAN BELL TELEPHONE COMPANY,)
d/b/a AMERITECH MICHIGAN.)
_____)

Case No. U-12382

Suggested Minute:

“Adopt and issue order dated August 17, 2000 adopting the decision of the arbitration panel establishing interconnection arrangements between Coast to Coast Telecommunications, Inc., and Ameritech Michigan, as set forth in the order.”